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10/711,398	09/16/2004	Alexander P. RIGOPULOS	HRX-007	5397

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EXAMINER	
RENDON, CHRISTIAN E	
ART UNIT	PAPER NUMBER
3714	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/711,398	RIGOPULOS, ALEXANDER P.	
	Examiner	Art Unit	
	CHRISTIAN E. RENDÓN	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 March 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *87 and 90-104* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *87 and 90-104* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

This office action is in response to the amendment filed on 3/25/09 in which applicant canceled 1-86, 88-89, 105; amended 87, 90-92, responded to the office action. Claims 87, 90-104 are still pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 87, 90-92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant cites paragraphs 55-56 of the specification as providing support towards the amendments. The cited support describes embodiments consisting of an entire video game and recorded music products being sold from a server. The selection of recorded music for sale consists of the songs that are performed by a musical artist that the game is based on, other songs by the same artist or songs by other artist that are related to the songs found in the game. Recorded music product is taken to define a music file containing lyrics sung by an artist and the instrumental components required to consider the song complete. In other words, the recorded music product is an exact copy of a song that is also found in an album and not a portion of the song. A song found in a music based video game is considered a portion of said song since the missing component is the portion of the said song that is performed by the player; this is considered the definition of a quantum (portion) of music content. Furthermore, the Examiner views any degree of music content found in the game as a **portion of the video game**. Hence the Examiner's confusion on what the applicant considers a **portion of the video game** that is not a **quantum of music content**. The cited paragraphs fail to

support a **quantum of music content "*and*"** a **portion of a video game** as separate downloadable units, offering for sale a **portion of the video game *"and"* the quantum of music content**, **playback** of the **quantum of music** is achieved **independent of the game platform**, and the sale of a **portion of the video game *"and"* the quantum of music content** as a single purchase unit. In addition the cited paragraphs make no mention of the format of the quantum of music content as mp3, wav, or aiff. The proper citations are required for the consideration of the amendments.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 87, 93 and 95-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 2003: Music Mixer Details (http://xbox.ign.com/articles/401/401793p1.html) in view of XBOX Live to Launch on One-Year Anniversary of Console Launch (http://www.microsoft.com/presspass/press/2002/aug02/08-13xboxlivelaunchpr.mspx).

1. The prior art discloses a karaoke game called Music Mixer that after its launch could offer downloadable songs via XBOX Live for a fee (E3: Your own Karaoke Lounge, par 1). An XBOX owner who purchases an online-enabled game and a yearly subscription will have access to exclusive downloadable content consisting of levels, characters, weapons (XBOX: 5th bullet) or other content related to a game for free or at a price. Therefore portions of the game like new songs are stored on a server and offered to players through an online store. The Office would like to clarify that even if the songs were offered for free, the network is still a store since you have to pay to gain access to the network & the person is paying for the songs through the membership fee.

2. Regarding claim 87, the first reference discloses Music Mixer as a singing game (E3: Your own Karaoke Lounge, par 1). Thus the prior art is a **music based video game with a portion of a video**

game based on a quantum of music content. The prior art has the ability to remove the vocals of any stored song in real time (E3: Your own Karaoke Lounge, par 2). As stated above, the Examiner considers the songs found in the game to teach a quantum of music content since the songs are missing the artist voice. In addition, the article reveals the possibility of offering downloadable songs for a fee (E3: Your own Karaoke Lounge, par 1); thus teaching the **offering for sale of a quantum of music content as downloadable content**. The XBOX Live article teaches a variety of downloadable content that may be offered based on the game. In other words, the XBOX Live teaches offering downloadable content, such as new characters (XBOX: 5th bullet) that are considered a **portion of a video game** but not a **quantum of music content**. Thus the references teach storing **downloadable content in a server** on the XBOX Live network that is a portion of a video game (character) and/or quantum of music content (new songs).

3. This paragraph is in regards to the claim limitation stating "**playback can be achieved independent of the game platform**". The applicant has failed to provide evidence that the specification supports playback outside of the game platform that downloaded the quantum music content. However, the Examiner will point out how the reference teaches this amendment in case the support is there. Music Mixer discloses the software's ability to broadcast locally and globally ripped music across the Internet (E3: Global Rave, par. 3). Furthermore, the Music Mixer is able to save a karaoke performance to the hard drive and play them as a custom soundtrack (E3: Your Own Karaoke Lounge, par. 2). Thus the prior art teaches the **playback** of any songs saved on the hard drive occurring outside or **independent of the game platform** that stored the songs.

4. Regarding claims 93-94, the prior art discloses the use of a microphone in a sing-along game (E3: par. 2).

Claims 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 2003: Music Mixer Details and XBOX Live to Launch on One-Year Anniversary of Console Launch in view of Quality MP3 Ripping (http://www.wideopenwest.com/~mikebo/mp3.html)

5. The above description of the art combination and the limitations they pertain is considered within this art rejection as well. The prior art teaches storing music content as an mp3. However remains silent towards the use of a wav or aiff file format. The new reference discloses wav and aiff file formats as another means of compressing music into digital audio (Quality: 2-MP3 Background).

Claims 95-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 2003: Music Mixer Details and XBOX Live to Launch on One-Year Anniversary of Console Launch in view of XBOX Music Mixer Picture (http://xbox.ign.com/dor/objects/566573/xbox-music-mixer/images/musicMixer_091903_13.html).

6. The above description of the art combination and the limitations they pertain is considered within this art rejection as well. The provide picture is an screen shot from Music Mixer that displays a character, control buttons and a progress bar.

7. Regarding claims 95-96, 98-99, the progress bar teaches representing a **musical time axis as a spatial path**. The progress bar is in the foreground of the game image; thus teaching a **spatial path does not lie within an image plane of a display and is rendered into the image plane.**

8. Regarding claim 97, 100, the picture is displaying a **computer generated likeness of a musician** as the player's avatar.

Claims 101-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over E3 2003: Music Mixer Details and XBOX Live to Launch on One-Year Anniversary of Console Launch in view of Karaoke Revolution (http://ps2.ign.com/articles/458/458064p1.html).

9. The above description of the art combination and the limitations they pertain is considered within this art rejection as well. The art combination remains silent towards the avatar responding to

the player's musical performance. 'Karaoke Revolution' (KR) is another sing-along game that also displays a character that resembles a musician; since the avatar is holding a microphone when he or she is on stage. The game also contains an innovative scoring system that ranks a player on their rhythm and pitch (KR: par. 4). The audience's reaction and your computer-generated musician's movements and appearances are based on a player performance (KR: par. 4). Thus it would have been obvious to an ordinary artisan to combine these prior arts in an attempt to create a more fulfilling experience for the player as an encouragement for the player to perform to their best.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Examiner's Note

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims is patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dimtry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

/CHRISTIAN E RENDÓN/
Examiner Art Unit 3714
CER